IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 949 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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PRATAPBHAI PRANJIVANBHAI GANDHI

Versus

JOINT CHARITY COMMISSIONER

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Appearance:

1. Special Civil Application No. 949 of 2002

MR PJ KANABAR for Petitioner No. 1-12

MS DEVANI, Ld AGP for Respondent No. 1-2

MR YOGESH S LAKHANI for Respondent No. 3

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CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 05/08/2002

ORAL JUDGEMENT

1. The present petition is preferred by the petitioners for quashing of the order dated 13-7-2001

passed by respondent No.1 i.e. Joint Charity Commissioner in Judicial Misc. Application No.9/2001. Thereafter, the petitioners have amended the prayer by seeking challenge to the final order dated 19-4-2002 passed by the Joint Charity Commissioner.

2. Heard Mr.P.J.Kanabar, learned Counsel appearing on behalf of the petitioners, Ms.Devani, learned AGP for respondents No.1 and 2 and Mr.Y.S.Lakhani, learned Counsel appearing on behalf of respondent No.3.

3. Mr.Kanabar for the petitioners has submitted that initially the sitting Trustees of the Trust in question has submitted a requisition for the purpose of holding the meeting of the Trustees for removal of respondent No.3 as President of the Trust. The prayer in the requisition was also for removal of respondent No.3 as the Trustee. However, he submitted that thereafter as per the agenda dated 26-6-2001, the Secretary of the Trust has convened the meeting for the purpose of removal of respondent No.3 as President of the Trust only and the said meeting was convened of the general board and not only of the Trustees. Mr.Kanabar has submitted that it is a settled legal position that respondent No.3 who is elected as the President from amongst the Trustees of the Trust can be recalled or removed as the President of the Trust by the Trustees. Mr.Kanabar has relied upon the judgement of the Full Bench of this Court reported in 2002(1) GLH, 659 to contend that in a matter of no-confidence, even this Court has taken the view that there is inherent right in a democratic society to recall the office-bearers and, therefore, he submitted that when respondent No.3 is not to be removed as the Trustee, but he is only proposed to be removed as the President of the Trust, the Joint Charity Commissioner could not have passed the order for the purpose of issuing directions as per the final order dated 19-5-2002 on the basis that the provisions of Sections 50 and 51 of the Act of the Bombay Public Trust act (hereinafter referred to as "the Act") are applicable. He submitted that in the order of the Joint Charity Commissioner, the direction is given for finalisation of the change report which is pending before the Joint Charity Commissioner under Section 20 and 22 of the Act. However, the Joint Charity Commissioner has not properly given effect to the decision of the Full Bench of this Court and in his submission, there is no reason for the Joint Charity Commissioner to interfere with the meeting, which was convened as per the agenda dated 26-6-2001. Mr.Kanabar has also submitted that if the fresh meeting of the general board is held for considering the question of removal of respondent No.3 as

the President of the Trust, the same would serve the purpose of the petitioners and disputes pertaining to the proceedings under provisions of Section 41A of the Act can be put to an end.

4. On behalf of respondent No.3, original applicant before the Joint Charity Commissioner, Mr.Lakhani, after obtaining instructions from his client, has fairly submitted that respondent No.3 in his capacity as the President of the Trust shall issue the agenda for holding the general meeting of the Trust within a period of 15 days from today and the General Meeting of the Trust shall be held within a period of 15 days thereafter for the purpose of considering the question of removal of respondent No.3 as the President of the Trust.

5. In view of the above submissions made on behalf of both the sides, I am of the view that it is not necessary for this Court to examine the qustion raised by the petitioners regarding the power and authority of the Joint Charity Commissioner, more particularly when respondent No.3 expresses his willingness to hold the general meeting of the Trust. Even otherwise also, there is a General Body of the Trust, which enjoys the superior power and ultimately General Body of the Trust can be said to be a final authority so far as the question of removal of respondent No.3 as the President of the Trust is concerned.

6. In that view of the matter, respondent No.3 is directed to act as per the statement made for holding the general meeting of the Trust by issuing agenda within a period of 15 days and to hold the meeting within a period of 15 days thereafter, for considering the issue as recorded earlier.

7. It is clarified that if the general body in the general meeting takes decision of removing respondent No.3 or for continuing him as the President of the Trust, the rights of the parties shall be governed accordingly. After the meeting of the general body of the Trust as indicated is held, the earlier order passed by the Jt. Charity Commissioner so far as it relates to proceedings under sections 50 and 51 of the Act are concerned shall cease to operate and shall be substituted by the final decision of the General Body of the Trust. The direction for finalisation of the change report shall continue.

8. The petition is disposed of in terms of the aforesaid directions. Rule is made absolute to the aforesaid extent. No costs.

5-8-2002 (Jayant Patel, J.)

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